

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)
Against the Montana Republican)
State Central Committee)

**SUMMARY OF FACTS
AND
STATEMENT OF FINDINGS**

Jim Farrell filed a complaint alleging that the Montana Republican State Central Committee violated § 13-37-226, MCA, when it filed a required campaign finance report form after the due date.

SUMMARY OF FACTS

1. The Montana Republican State Central Committee (MRSCC) is a political committee that typically supports or opposes various candidates. Under Montana law it is considered an independent political committee.
2. The complaint alleges that the MRSCC filed its 2004 pre-general election report one day late.
3. In 2004 the general election was held on November 2. Montana law required an independent committee to file a pre-election finance report by October 21, 2004.
4. The MRSCC filed its pre-election campaign finance report on October 22, 2004, one day late. The report covered the reporting period of June 24 to October 16, 2004, and reported contributions received and expenditures made during that period.
5. In a letter submitted in response to the complaint, Shirley J. Wareheim, MRSCC's state treasurer, conceded that the report was filed one day late. Wareheim explained that the report consisted of over 700 pages and the MRSCC experienced technical difficulties in reproducing copies of documents to be included with the report. The letter states that the office of the Commissioner of Political Practices (Commissioner) was informed "by a telephone conversation" that the report would not be filed on October 21st.

6. The report filed by the MRSCC on October 22, 2004 is voluminous, probably in excess of 700 pages. The standard practice of the office of the Commissioner is to include a note of any relevant telephone conversations in a political committee's campaign finance report file. While it is possible a call was made, the MRSCC file in the office of the Commissioner does not contain any notes reflecting a telephone conversation regarding the MRSCC's report being filed late. If such a call was made, the standard practice of the office of the Commissioner would have been to advise the caller that at least something should have been filed on the due date, with the potential for an amended report to be filed at a later date.

STATEMENT OF FINDINGS

Under Montana law and the rules of the Commissioner the MRSCC is classified as an independent committee. § 13-37-226(5), MCA; ARM 44.10.327(2)(b) and 44.10.329. Independent committees are required to file pre-election reports "on the 12th day preceding the date of an election in which it participates by making an expenditure." § 13-37-226(5)(a), MCA. As noted, the MRSCC's pre-election report was due on October 21, 2004, but it was filed one day late, on October 22, 2004.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is substantial evidence to conclude that the MRSCC failed to file its pre-election report within the time provided by Montana law. § 13-37-128, MCA, authorizes a civil action to address intentional or negligent violation of the reporting provisions of Montana's campaign finance and practices laws. Under that statute a successful civil action could result in the imposition of a civil penalty of not to exceed \$500 or three times the amount of any unlawful contributions or expenditures.

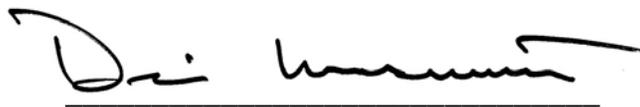
§ 13-35-124(1), MCA, requires the Commissioner to notify the county attorney "[w]henver the Commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution"

The determination of whether a prosecution is justified must take into account the particular factual circumstances of each case. A prosecutor can decide not to prosecute whenever he or she in good faith believes that a prosecution would not be in the state's best interests. Despite the finding that the MRSCC failed to file its pre-election report in a timely way, I've concluded that a civil prosecution is not justified. In my view it's unlikely a substantial civil penalty would be imposed under § 13-37-128, MCA, since MRSCC's report was filed only one day late.

The law establishes deadlines for filing of campaign finance reports, and this office strives to ensure compliance with those deadlines. If a particular candidate or political committee has failed to file a report by the applicable deadline, the standard practice of this office is to contact the treasurer and request that the report be filed as soon as possible. If such informal efforts are not successful, more formal measures are employed, including an order of noncompliance or a court action seeking a civil penalty. In this case it was not necessary to contact the MRSCC, because the MSRCC filed its report on the day following the due date, disclosing contributions received and expenditures made during the reporting period.

In consideration of the amount of the potential civil penalty that could be awarded in a successful prosecution and the costs associated with a prosecution, I've determined that it would not be in the best interests of the State of Montana to pursue a civil prosecution against the MRSCC. Political committees and candidates should be aware, however, that the Legislature has established specific deadlines for filing campaign finance reports. While this office will continue, when appropriate, to employ informal means to ensure that reports are filed in a timely way, it reserves the right to take more formal action when circumstances call for it.

DATED this 19th day of March, 2007.



Dennis Unsworth
Commissioner